

Message Text

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ACTION L-03

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FM AMEMBASSY TOKYO

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C O N F I D E N T I A L TOKYO 5512

FOR EA AND L/T

E.O. 11652: GDS

TAGS: PFOR, JA

SUBJECT: CASE ACT COMPLIANCE--JOINT COMMITTEE DOCUMENTS

REF: STATE A-1394, MARCH 9, 1976

SUMMARY: THE GOJ HAS COMPLAINED OF THE PUBLICATION BY CONGRESS THROUGH

CASE ACT PROCEDURES OF AN AGREEMENT MADE BY JAPAN AND THE U.S. IN THE JOINT COMMITTEE. BOTH COUNTRIES HAVE LONG SINCE AGREED THAT JOINT COMMITTEE PROCEEDINGS AND AGREEMENTS WOULD NOT BE RELEASED WITHOUT THE CONSENT OF EACH, BUT CASE ACT REQUIREMENTS APPARENTLY MAKE RELEASE A CONTINUING POSSIBILITY. GIVEN THE GOJ'S SENSITIVITY AND THE IMPORTANCE OF A SMOOTH WORKING RELATIONSHIP ON DEFENSE MATTERS, THE EMBASSY AND US FORCES JAPAN (USFJ) NEED GUIDANCE TO RESOLVE THIS CONFLICT OF INTEREST. END SUMMARY.

1. WHEN THE JOINT COMMITTEE WAS ESTABLISHED TO IMPLEMENT THE STATUS OF FORCES AGREEMENT (SOFA) UNDER THE REVISED SECURITY TREATY IN 1960, BOTH GOVERNMENTS AGREED THAT ALL MINUTES AND ATTACHED DOCUMENTS (INCLUDING "AGREEMENTS") RESULTING FROM JOINT COMMITTEE PROCEEDINGS WOULD BE HELD CONFIDENTIAL AND NOT PUBLICLY CONFIDENTIAL

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RELEASED WITHOUT PRIOR MUTUAL AGREEMENT. WITH FEW LOCAL SLIPS

DURING THE PERIOD SINCE, BOTH SIDES HAVE ADHERED TO THIS AGREEMENT.

2. AT THE APRIL 8 MEETING OF THE JOINT COMMITTEE, THE JAPANESE SIDE PRESENTED ON THE RECORD AN ORAL STATEMENT EXPRESSING ITS DISAPPROVAL OF THE RELEASE AND PUBLICATION OF AN AIR TRAFFIC CONTROL AGREEMENT WHICH HAD BEEN CONCLUDED IN THE JOINT COMMITTEE LAST YEAR AND THEN TRANSMITTED TO WASHINGTON UNDER THE PROCEDURES OF THE CASE ACT.

3. USFJ HAS SINCE CONFIRMED THAT THE AGREEMENT IN QUESTION WAS APPROVED BY THE JOINT COMMITTEE ON MARCH 8, 1975, AND TRANSMITTED, LIKE ALL JOINT COMMITTEE MINUTES AND THEIR ATTACHMENTS TO SECDEF IN ACCORDANCE WITH STANDING INSTRUCTIONS. EACH COPY OF SUCH JOINT COMMITTEE DOCUMENTS BEARS THE FOLLOWING LEGEND: "THESE MINUTES ARE CONSIDERED AS OFFICIAL DOCUMENTS PERTAINING TO BOTH GOVERNMENTS AND WILL NOT BE RELEASED WITHOUT MUTUAL AGREEMENT." UNDER CURRENT PROCEDURES, USFJ ROUTINELY SENDS THREE COPIES OF ALL DOCUMENTS, BOTH JOINT COMMITTEE AND OTHERS, WHICH ARE CONSIDERED TO FALL UNDER THE CASE ACT TO SECDEF/GENERAL COUNSEL WITHIN FIFTEEN DAYS OF ENACTMENT. OTHER COPIES ARE SENT AT THE SAME TIME TO CINCPAC FOR INCLUSION IN THE AUTOMATED INVENTORY AND CROSS REFERENCE INDEX OF COMPUTERIZED PACOM AGREEMENTS. THESE DOCUMENTS ARE IMPORTANT IN OUR DAY TO DAY RELATIONS WITH JAPAN ON DEFENSE MATTERS, EVEN THOUGH THEY MAY INDIVIDUALLY APPEAR ROUTINE. THE TITLES OF SOME RECENT JOINT COMMITTEE AGREEMENTS SO TRANSMITTED ARE: "IMPOSITION OF JAPANESE PROPERTY TAX ON BASE TRAILER-TYPE HOUSES" (1/27/75); "LETTER OF AGREEMENT, SUBJECT: CLEARANCE AND DEPARTURE INFORMATION" (5/15/74); "AGREEMENT RELATING TO DETAILED PROCEDURES ON CUSTOMS EXAMINATIONS IN THE TOKYO AREA" (3/13/75).

4. THE GOJ'S SENSITIVITY ABOUT THE RELEASE OF SUCH AGREEMENTS RELATES TO ITS HANDLING IN THE DIET OF DEFENSE MATTERS, INCLUDING US-JAPAN JOINT COMMITTEE RECORDS AND AGREEMENTS, IN RESPONSE TO QUESTIONS FROM THE OPPOSITION. GOVERNMENT POLICY HAS ALWAYS BEEN TO PROVIDE THE DIET, WHEN REQUIRED, ONLY A BRIEF SUMMARY COVERING THE GIST OF AN AGREEMENT OR PROCEEDING, NEVER THE FULL TEXT. THIS POLICY PREDATES THE ESTABLISHMENT OF THE JOINT COMMITTEE AND PERTAINS TO OTHER GOJ MATTERS AS WELL. THE CONFIDENTIAL

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FOREIGN OFFICE HAS PERIODICALLY RENEWED ITS CAUTION TO US AND UNDERScoreD THE IMPORTANCE IT ATTACHES TO CONSISTENT ADHERENCE TO THIS PROCEDURAL AGREEMENT. THE FOREIGN OFFICE EXPLAINS THAT, IF ONE AGREEMENT IN FULL TEXT IS RELEASED TO DIET OR PRESS, THE GOJ WILL BE DEFENSELESS AGAINST DEMANDS FOR RELEASE OF OTHERS--AMONG WHICH ARE A NUMBER OF SENSITIVE UNDERSTANDINGS OF A SPECIAL NATURE WHICH WOULD BE POLITICALLY EXPLOSIVE.

5. THE SITUATION NOW IS THAT WHILE THE USG HAS AGREED NOT TO MAKE PUBLIC THE TEXTS OF JOINT COMMITTEE DOCUMENTS, COMPLIANCE WITH THE CASE ACT APPARENTLY MAKESTAMYUCATION LIKELY. THIS HAS CREATED A PROBLEM FOR THE GOJ. IF THERE IS INDEED A DIRECT CONFLICT BETWEEN OUR AGREEMENT TO HOLD THESE DOCUMENTS FROM PUBLIC VIEW AND THE REPORTING REQUIREMENTS OF THE CASE ACT, BOTH GOVERNMENTS PRESUMABLY WOULD HAVE TO EXAMINE NOT ONLY THE WAY IN WHICH WE CONDUCT OUR BUSINESS IN THE JOINT COMMITTEE BUT ALSO THE BASIC ATMOSPHERE ENCOURAGING ON-GOING SECURITY CONSULTATIONS.

6. WE HAVE TAKEN THE GOJ COMPLAINT UNDER CONSIDERATION AND ARE OBLIGATED TO PROVIDE A RESPONSE IN DUE COURSE. WE THEREFORE REQUIRE THE DEPARTMENT'S GUIDANCE ON WAYS IN WHICH WE CAN CONTINUE TO PROTECT CONFIDENTIALLY OF THESE DEALINGS WITH THE GOJ IN LIGHT OF CASE ACT REQUIREMENTS.
HODGSON

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